

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, DC 20554

APR - 7 1998

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Federal-State Joint Board on) CC Docket No. 96-45
 Universal Service)

REPLY TO BELL ATLANTIC'S OPPOSITION

The Wireless Cable Association International, Inc. ("WCA"), by its attorneys and pursuant to Section 1.429(g) of the Commission's Rules, hereby replies to Bell Atlantic's Opposition To and Comments On Petitions For Reconsideration^{1/} of the *Fourth Order on Reconsideration* in this proceeding (the "*Universal Service Fourth Reconsideration Order*").^{2/}

Quite simply, Bell Atlantic is wrong when it asserts that WCA "demand[s] special treatment similar to requests that the Commission has previously rejected."^{3/} To the contrary, WCA simply seeks to be treated in the same manner as its competitors -- no more and no less. In its Petition for Reconsideration,^{4/} WCA seeks only to clarify two narrow issues to

^{1/} See Bell Atlantic's Opposition To and Comments On Petitions For Reconsideration, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72 (filed Mar. 25, 1998)[hereinafter cited as the "Bell Atlantic's Opposition"].

^{2/} See *Federal-State Joint Board on Universal Service*, FCC 97-420, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72 (rel. Dec. 30, 1997)[hereinafter cited as the "*Universal Service Fourth Reconsideration Order*"].

^{3/} Bell Atlantic's Opposition, at 1.

^{4/} See WCA Petition for Reconsideration, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72 (filed Feb. 12, 1998).

ensure that the universal service rules reflect the Commission's intent as expressed in the *Universal Service Fourth Reconsideration Order*. First, WCA has asked that the Commission include ITFS licensees in Section 54.703's list of entities exempt from contributions to universal service so that the Commission's Rules will reflect the Commission's holding in the *Universal Service Fourth Reconsideration Order* that it would exempt "broadcasters, *including ITFS licensees*, that engage in non-common carrier interstate telecommunications [from the requirement] to contribute to universal service."^{5/} WCA's second and related point is that, in recognition of the Commission's intent to exempt all video programming distributors without regard to the distribution technologies that they employ, MDS licensees that lease capacity for wireless cable use, like ITFS licensees, should also be included in Section 54.703(b) and (c)'s lists of entities exempt from universal service.^{6/}

Contrary to Bell Atlantic's suggestion, WCA is quite right in asserting that the Commission has specifically exempted from universal service video programming distributors, including open video systems, cable leased access or direct broadcast satellite

^{5/} *Id.* (emphasis supplied) cited in WCA Petition for Reconsideration, at 3. While Sections 54.703(b) and (c) of the Rules, which list the entities that are exempt from universal service contribution obligations, were revised in the *Universal Service Fourth Reconsideration Order* to specifically exclude "broadcasters," they make no specific reference to ITFS licensees. See 47 C.F.R. § 54.703(b) and (c) (as amended by the *See Universal Service Fund Fourth Reconsideration Order and Errata*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 97-21, DA 98-158 (rel. Jan. 29, 1998)).

^{6/} See WCA Petition for Reconsideration, at 5-8.

(“DBS”) services.^{7/} In the *Universal Service Fund Order*, the Commission stated in no uncertain terms that:

We . . . clarify that satellite and video service providers must contribute to universal service only to the extent that they are providing interstate telecommunications services. Thus, for example, entities providing, on a common carrier basis, video conferencing services, channel service or video distribution to cable head-ends would contribute to universal service. Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services would not be required to contribute on the basis of revenues derived from those services.^{8/}

There is no sound reason, then, that MDS licensees that lease capacity to wireless cable operators should be denied the same treatment as those competitors who provide the same types of services. Indeed, this conclusion is compelled by the principle of competitive neutrality and notions of fundamental fairness.^{9/}

Bell Atlantic has constructed its opposition on a weak foundation. Bell Atlantic’s Opposition is based on the premise that “[t]o the extent an MDS licensee elects common carrier status and offers telecommunications service, under the [Communications Act of

^{7/} See *Federal-State Joint Board on Universal Service*, 12 FCC 8776, 9176 (1996)[hereinafter cited as the “*Universal Service Fund Order*”].

^{8/} *Id.*; see 47 C.F.R. §§ 54.703(b) and (c).

^{9/} When it enacted Section 254 of the Communications Act, Congress placed upon the Commission the duty to develop new universal service rules consistent with the principle of competitive neutrality. See 47 U.S.C. § 254(h)(2)(A) (directing the Commission to “establish competitively neutral [universal service] rules . . . to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries.”). The Commission has accordingly sought to impose the principle of competitive neutrality upon the universal service regime, noting that “universal service support should not be biased against any particular technologies.” See *Universal Service Fund Order*, 12 FCC Rcd at 8802.

1934 as amended] it must contribute to universal service .. .”^{10/} Yet nowhere in this proceeding has WCA suggested that an MDS licensee should be exempt where it offers common carrier interstate “telecommunications” services to the public.^{11/} Instead, the essence of WCA’s position in this proceeding is that the MDS and ITFS licensees who lease capacity to wireless cable operators should be treated in a manner similar to their counterparts in the highly competitive video distribution marketplace.

Further, Bell Atlantic’s second line of argument is wholly without basis in the record. Bell Atlantic asserts that MDS licensees are attempting to piggyback on wireless cable operators’ exemption from universal service.^{12/} This assertion is wholly without basis in the record. WCA has never suggested that MDS and ITFS licensees should be exempt from universal service contributions because they provide services to an exempt end user. Rather, WCA’s simple point has been that the Commission has intended that providers of video programming should not be required to contribute since they do not provide a service similar

^{10/} Bell Atlantic’s Opposition, at 3. From this foundation, Bell Atlantic then expresses its fear that MDS licensees regardless of their regulatory status may offer telecommunications services in competition with common carriers, and that such MDS licensees may be exempted from the obligation to contribute to universal service. *Id.* While WCA is flattered that Bell Atlantic is concerned about the competitive threat posed by wireless cable, this is simply not the case.

^{11/} WCA can only surmise that Bell Atlantic has failed to appreciate the distinction made in the *Universal Service Fund Order* between common carrier telecommunications services and video service offerings when it suggests that MDS licensees that lease capacity for wireless cable use provide “telecommunications” services as that term is used for purposes of the universal service rules in competition with the common carrier offerings of Bell Atlantic. *See id.* at 9176.

^{12/} *See* Bell Atlantic’s Opposition, at 3.

to that provided by traditional common carriers,^{13/} but that the Commission appears to have overlooked MDS and ITFS licensees when in crafted the text of its universal service rules.

WCA takes exception to Bell Atlantic's assertion that WCA seeks to eliminate all universal service funding and undermine Section 254 of the Act.^{14/} The record shows that WCA has remained supportive of the goal of ensuring affordable telecommunications service to all Americans that is at the heart of this proceeding. WCA has merely sought to ensure that the rules and policies governing universal service support are fair and equitable to all comparable competitors, and that wireless cable is treated in a similar manner as its competition.

For the reasons expressed in above and earlier in this proceeding, the Commission should deny those portions of Bell Atlantic's Opposition that relate to the universal service contributions of ITFS and MDS licensees, grant WCA's Petition for Reconsideration and clarify Section 54.703(b) and (c) to include ITFS and MDS licensees that lease capacity to

^{13/} For example, in the *Universal Service Fourth Reconsideration Order* the Commission recognized "that broadcasters do not compete to any meaningful degree with common carriers that are required to contribute to universal service because broadcasters primarily transmit video programming, a service that is not generally provided by common carriers." *See Universal Service Fourth Reconsideration Order*, at ¶ 283.

^{14/} *See* Bell Atlantic's Opposition, at 3.

wireless cable operators among the entities exempt from universal service contribution obligations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Deanna L. Susens, hereby certify that the foregoing Reply to Bell Atlantic's Opposition was served this 7th day of April, 1998, by depositing a true copy thereof with the United States Postal Service, first-class postage prepaid, addressed to the following:

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